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No. 85-1934

IN THE

Supreme Court of the United States

October Term, 1985

DIGICOURSE, INC.,
Petitioner,

vs.

AMA DISTRIBUTORS, INC., et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FEDERAL COURT

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AMA Distributors, Inc., et al., hereby reply to the petition of Digicourse, Inc. to review the decision of the CAFC in the case of Digicourse, Inc. v. AMA Distributors, Inc. et. al.

I. STATEMENT

Digicourse seeks to characterize the affirmance by the Court of Appeals for the Federal Circuit (CAFC) of the district court's simple and straightforward grant of summary judgment of noninfringement in this case as a deprivation of its right to trial by jury guaranteed under the 7th Amendment of the Constitution of the United States. No such issue exists in this case. The district court properly reviewed the patent specification, its prosecution history, and the prior art,

interpreted the claims of the patent in suit as a matter of law, and then granted summary judgment of noninfringement after the parties stipulated that the claims, as interpreted, were not readable upon the accused structures. There were no disputed issues of fact and summary judgment was properly entered. The CAFC, after consideration of the parties' briefs and oral arguments, affirmed this decision.

Digicourse filed a petition for rehearing *in banc*, but after considering the decision of the panel, the petition for rehearing was denied.

This was an action for infringement of U.S. Patent No. 4,032,222 entitled Controlled Reflection Readout for Digital Displays. A copy of this patent is attached hereafter as Appendix A. Digicourse accused 31 different games distributed by one or more of the defendants (hereinafter referred to as "AMA") of infringing Claim 1 of the '222 patent. AMA filed a motion *in limine* requesting that the district court exclude all evidence from the trial relating to infringement by any of the accused games which did not include a view limiting shield which prevented viewing any portion of the CRT display unit at a 90° angle as required by Claim 1 of the '222 patent. The Court, after considering the written briefs and oral arguments of the parties, interpreted Claim 1 of the patent, in light of its specification, file history, and the prior art, and ruled that, as a matter of law, the patent claims were limited to structures wherein a view limiting shield prevented an observer from viewing any portion of the display unit at an angle of 90°.

Thereafter, the parties agreed that, with respect to all of the accused games, the view limiting shields of the games did not prevent viewing all portions of the displays at a 90° angle. AMA moved for summary judgment of noninfringement with respect to all accused games and, after consideration of both written briefs and oral arguments, summary judgment was entered.

On appeal, the CAFC affirmed the district court's decision stating in part:

> Based upon the clear language of the claims, the district court properly construed the claims as a matter of law, see *McGill, Inc. v. John Zink Co.*, 736 F.2d 666,671, 221 USPQ 944, 948 (Fed. Cir. 1984), and found, based on its construction, that AMA's video games do not infringe the claims either literally or under the doctrine of equivalents.

Digicourse was not entitled to a jury trial where summary judgment was properly entered by the district court. The CAFC in no way deprived Digicourse of any 7th Amendment rights.

II. REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

The crux of Digicourse's argument is that extrinsic evidence was needed in order to interpret the meaning of the term "viewing angle" as used in paragraph c of Claim 1 of the '222 patent. The district court found and the CAFC affirmed (Opinion, P. 2), that extrinsic evidence was not needed to understand this term, but rather that review of the patent specification, in light of its prosecution history and the prior art, established a "clear and unambiguous" meaning therefor.

The district court properly interpreted the meaning of the claims as a matter of law and, as interpreted, found that summary judgment should be entered in view of the agreement of the parties that all of the accused structures included light emitting displays which could be viewed in part at a 90° angle. Digicourse's claim that the CAFC ignored record evidence and substituted its own belief for fact is totally unfounded. The CAFC merely affirmed the decision of the district court which was clearly in accord with its earlier decisions including *McGill Inc. v. John Zink, Co. (supra)* and *Palumbo v. Don-Joy Co.*, 762 F.2d 969 (Fed. Cir. 1985).

Digicourse seeks to make much of the fact that the CAFC in footnote 2 of its opinion found the "art" to which this invention applied to be "nothing more than observing things" and then took judicial notice of the common meaning of the term "viewing angle." AMA submits that the CAFC's definition of the "art" in question was not only correct, but also helpful in clarifying the basic fallacy in Digicourse's argument, namely, that experts were needed to interpret the meaning of language which was already clear to anyone reading the patent. Digicourse's goal was to avoid entry of summary judgment by redefining, through the affidavits of so-called "experts," the meaning of terms which were already clear.

The CAFC need not have taken "judicial notice" of the meaning of the term "viewing angle" since its meaning, as found by the district court, was clear from the patent specification and its prosecution history. Nevertheless, Digicourse's argument that this footnote reference to "judicial notice" somehow constitutes a violation of its right to trial by jury guaranteed under the 7th Amendment of the Constitution borders on the absurd.

Review of the specification of the '222 patent discloses a description in at least eight different places of the blocking shield as prohibiting reading the digital display directly on or at an angle of 90°. This is the language which gives "clear and unambiguous" meaning to paragraph c of Claim 1 of the patent. This language shows Digicourse's attempt to give a new meaning to the phrase:

> . . . the viewing angle is restricted to less than 90° relative to the plane of said display unit thereby to eliminate reflections of external objects from the display unit.

by use of extrinsic affidavit evidence, to be both unwarranted and incorrect.

The CAFC also noted that the prosecution history of the '222 patent prevented Digicourse from interpreting the claims

of the patent as being readable upon structures wherein some portion of the light emitting display could be viewed at a 90° angle. The CAFC also properly noted that the prior art Hosokawa *et al.*, Heilmeier *et al.* and Shreve patents clearly disclosed structures similar to the accused AMA games, thus presenting another ground for barring Digicourse's interpretation of its claims.

Digicourse repeatedly argues that the term "viewing angle" is not defined within the patent. This is simply not correct. The trial court found, and the CAFC affirmed, that both the specification and file history of the '222 patent made the meaning of this term "clear and unambiguous." Digicourse now seeks to ignore the specification and file history of its own patent and rely instead upon the affidavits of its own so-called "experts" to give its claims a new and broader meaning. Digicourse is not the first patentee who has attempted to twist the meaning of its patent claims like a "nose of wax." *White v. Dunbar*, 119 U.S. 47, 7 S.Ct. 72, 30 L.Ed. 303 (1886). Digicourse's 7th Amendment argument may be more outlandishly unique than typical arguments raised by others seeking to avoid the entry of summary judgment, but, upon analysis, it merely boils down to another attempt to broaden the scope of patent claims which were originally narrowed in order to obtain their issuance.

III. CONCLUSION

Digicourse's petition for a writ of certiorari to the Court of Appeals for the Federal Circuit should be denied.

Respectfully submitted this 18th day of June, 1986.

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APPENDIX A

United States Patent [19] [11] 4,032,222

Lapeyre [45] June 28, 1977

[54] **CONTROLLED REFLECTION READOUT FOR DIGITAL DISPLAYS**

[75] Inventor: James M. Lapeyre, New Orleans, La.

[73] Assignee: Digicourse Inc., New Orleans, La.

[22] Filed: Mar. 24, 1976

[21] Appl. No.: 670,965

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 527,121, Nov. 25, 1974, abandoned.

[52] U.S. Cl. ..... 350/276 R; 350/110

[51] Int. Cl.[2] G02B 17/00

[58] Field of Search ..... 350/276 R, 284, 276 SL, 350/110-116; 340/282

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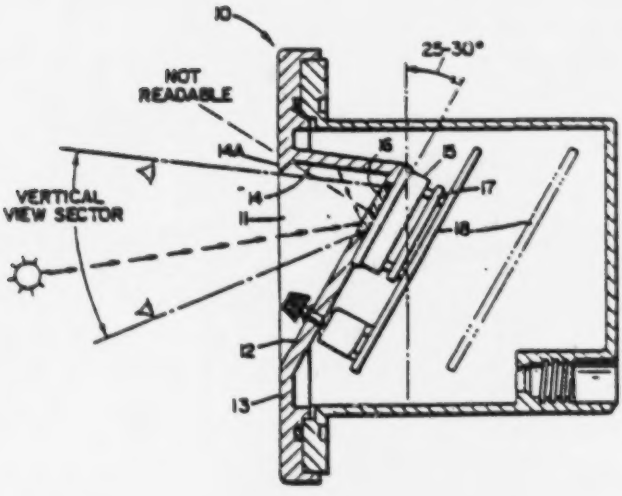
Primary Examiner—John K. Corbin
Assistant Examiner—B. W. de los Reyes
Attorney, Agent, or Firm—Wilkinson, Mawhinney & Theibault

[57] **ABSTRACT**

The present disclosure is directed to a controlled reflection readout for light emitting information displays for such apparatus as computers, compasses, watches, clocks and consoles wherein the light emitting display is not placed normal to the viewing plane and cannot be read at 90° to the display. The light emitting display is inclined to the line of sight and glare shielding means extends forwardly from the top of the display to prohibit reading the display at a right angle thereto whereby reflections from the sun or lights in a room will interfere with reading through the optically transparent window in front of the light emitting display.

11 Claims, 10 Drawing Figures



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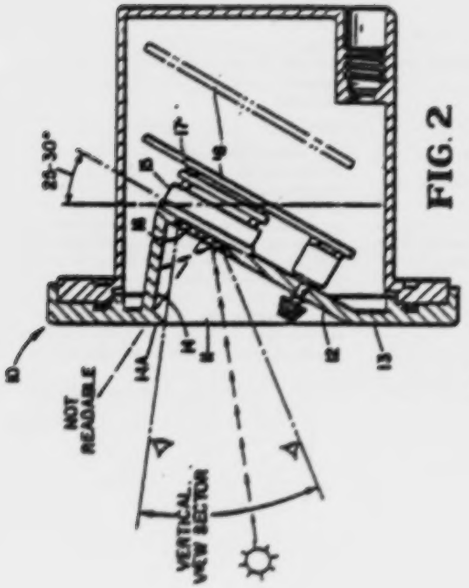

FIG. 2

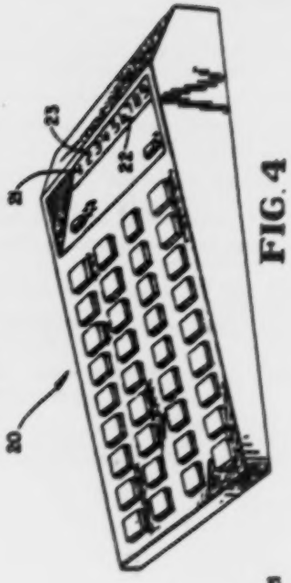

FIG. 4

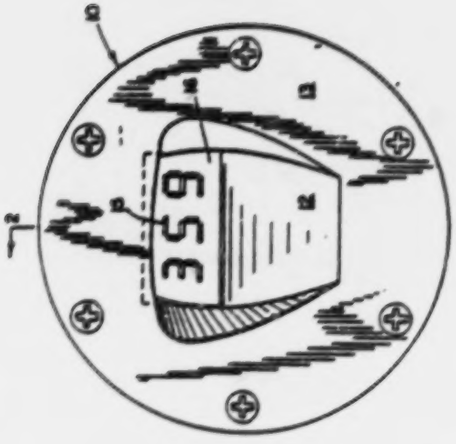

FIG. 1

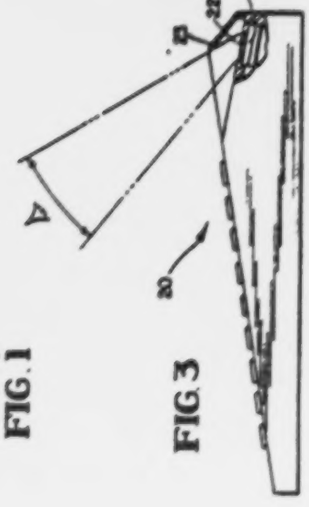

FIG. 3

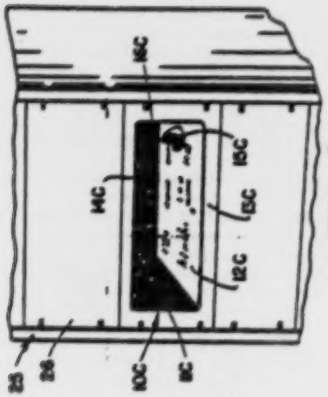

FIG. 9

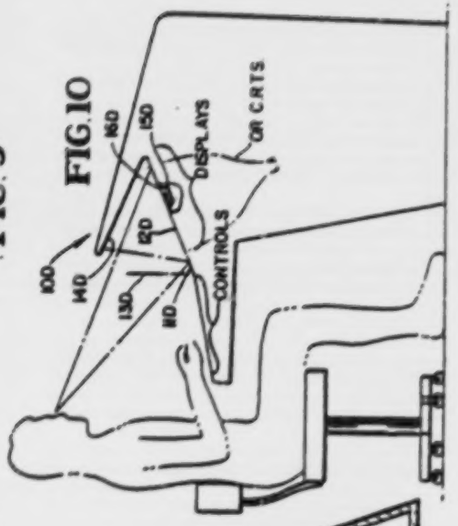

FIG. 10

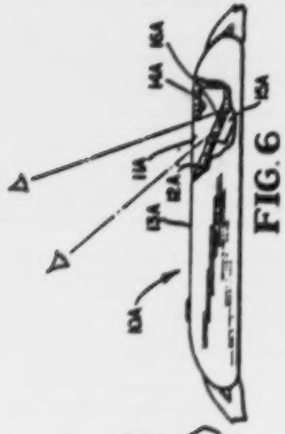

FIG. 6

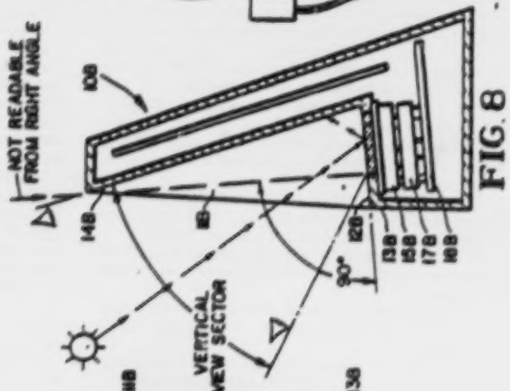

FIG. 8

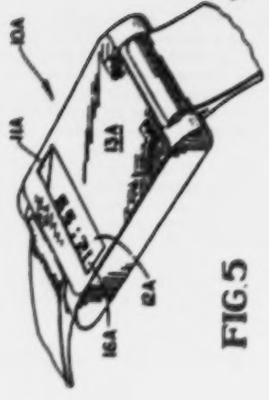

FIG. 5

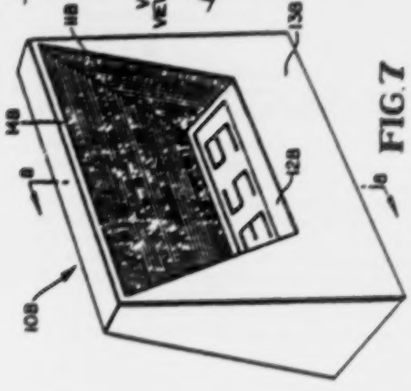

FIG. 7

CONTROLLED REFLECTION READOUT FOR DIGITAL DISPLAYS

This application is a continuation-in-part of my similarly entitled application Ser. No. 527,121, filed Nov. 25, 1974 now abandoned.

An object of the present invention is the elimination of reflections on the front surface of an optically transparent window in front of a light emitting display particularly in the application of digital displays of compass readouts employed on sail boats or power craft where reflections may ever present from the sun and water.

A further object is to eliminate reflections being visible from the segments which make up the digital displays.

A further object of the present invention is the provision of a casement mounting for light emitting displays which cannot be read straight on or at a vision plane 90° to the plane of the light emitting readout.

A still further object of the present invention is the provision of a shielding means having a non-reflective external surface which will accentuate the visibility of the lights employed in the light emitting digital presentation due to its reflected light absorption characteristics.

With the foregoing and other objects in view the invention will be more fully described hereinafter and more particularly pointed out in the appended claims.

In the drawings in which like parts are denoted by reference characters throughout the several views:

FIG. 1 is a front elevational view of a controlled reflection readout casement having a light emitting digital display mounted for viewing therein.

FIG. 2 is a vertical section of the casement of FIG. 1 taken on the lines 2—2 in FIG. 1.

FIG. 3 shows a vertical section of the light emitting digital display portion of the computer of FIG. 4, taken at an enlarged scale.

FIG. 4 is a perspective view of a pocket computer having the controlled reflection readout of the present invention about its light emitting digital display.

FIG. 5 is a perspective view of a digital wrist watch casement constructed in accordance with the present invention.

FIG. 6 is a side elevational view of the watch casement of FIG. 5 with parts broken away and parts shown in section.

FIG. 7 is a perspective view of a digital clock constructed in accordance with the present invention.

FIG. 8 is a vertical sectional view taken on the line 8—8 in FIG. 7.

FIG. 9 is a fragmentary perspective view of the light emitting controlled reflection readout display of the present invention as applied to instrument rack assembly of readouts.

FIG. 10 is a side elevational view of a console and observer viewing the light emitting information readout of the present invention.

Referring now to the drawings, 10 designates a casement having an angular depression 11 in which is located front or readout face 12. The readout face 12 is at an angle of the order of 25° to 60° relative to the front plane of the front cover 13 of the casement 10. The upper surface 14 of the depression defines a blocking shield to prohibit reading the digital display 15 directly on or at an angle of 90° thereto. A drip lip 14A is provided to keep rain or water spray from entering the casement depression and fouling the optically transparent window 16 which is parallel to and in front of the digital display. The digital display 15 has a connector 17 and printed circuit board 18 for controlling the digital presentation.

One of the preferred forms of the invention finds application aboard sail boats or power boats where the helmsman steers the boat from the readings presented by the digital display and it is important to eliminate reflections from the sun and water to accentuate the visibility of the lights in the digital display and render them sharp and vivid.

Ideally the entire front cover 13 has a non-reflective surface.

Referring now to FIGS. 3 and 4, 20 designates a portable calculator having a digital readout 21 viewable through an optically transparent window 22. Forwardly of and above the window 22 is a shield 23 which cooperates with the angular positioning of the digital display and its parallel optically transparent window to render the digital incapable of being read straight on or with the line of vision at a right angle to the window 22 to thereby eliminate reflections of external objects from the surface of window 22. The angular positioning of the window 22 and digital display is the same 25° to 60° shown in FIG. 2.

Referring now to FIGS. 5 and 6, 18A designates a watch casement having an angular depression 11A in which is located its front or readout face 12A. The readout face is at an angle of the order of 25° to 60° relative to the front plane of the front cover 13A of the casement 18A. The upper surface 14A of the depression defines a blocking shield to prohibit reading the light emitting digital display 15A directly or on an angle of 90° thereto. An optically transparent window 16A is parallel to and in front of the light emitting digital display 15A. The blocking shield 14A has a non-reflective surface.

Referring now to FIGS. 7 and 8, 18B designates a clock casement having an angular depression 11B in its front readout face 12B at an angle relative to the front plane of the front cover 13B of the casement 18B. The upper surface 14B of the depression defines a blocking shield to prohibit reading the light emitting digital display 15B directly on or at an angle of 90° thereto. The digital display 15B has a connector 17B and printed circuit board 18B for controlling the digital presentation.

Referring now to FIG. 9, 25 designates a rack of instruments 26 having casements 10C having an angular depression 11C in which are located their front or readout faces 12C. The readout face is at an angle of the order of 25° to 60° relative to the front plane of the front cover 13C of the casement 10C. The upper surface 14C of the depression defines a blocking shield to prohibit reading the light emitting digital or alphanumeric display 15C directly or on an angle of 90° thereto. An optically transparent window 16C is parallel to and in front of the light emitting display 15C. The blocking shield 14C has a non-reflective surface.

Referring now to FIG. 10, 10D designates a console casement having an angular depression 11D in the front of the console readout face 12D. The readout face 12D is at an angle of the order of 25° to 60° relative to the front plane of the front cover 13D of the console 10D. The upper surface 14D of the depression defines a blocking shield to prohibit reading the light

emitting information display 15D directly or on an angle of 90° thereto. An optically transparent window 16D is parallel to and in front of the light emitting display 15D or cathode ray tube as shown in FIG. 1B. The blocking shield 14D has a non-reflective surface.

The light emitting display may be of the gaseous discharge tube type or the light emitting diode type.

What I claim is:

1. A self illuminated readout having a glare and reflection control for ambient light comprising:

a. a casement having viewing opening therein for viewing inside a casement front plane,

b. a light emitting display unit positioned inside said casement in view of said opening disposed in a second plane inclined at an angle of the order of 25° to 60° to said front plane, and

c. view limiting shield means carried by said casing and positioned in the light path between the light emitting display and an observer so that the viewing angle is restricted to less than 90° relative to the plane of said display unit thereby to eliminate reflections of external objects from the display unit.

2. A self illuminated readout having a glare and reflection control for ambient light as claimed in claim 1 further comprising a window supported by the casement in said viewing opening positioned substantially parallel to the emitting surface of said light emitting display.

3. A self illuminated readout having a glare and reflection control for ambient light as claimed in claim 2 wherein the casement is a digital readout calculator.

4. A self illuminated readout having a glare and reflection control for ambient light as claimed in claim 2 wherein the casement is a watch casement.

5. A self illuminated readout having a glare and reflection control for ambient light as claimed in claim 2 wherein the casement is an array of stacked instruments.

6. A self illuminated readout having a glare and reflection control for ambient light as claimed in claim 2 wherein the casement is a console viewed by a seated person.

7. The readout defined in claim 1 having a glare absorbing means on the surface of said shield means extending inside said casement front plane.

8. A self-illuminated readout having a glare and reflection control for ambient light as claimed in claim 1 wherein the casement is a digital readout calculator.

9. A self-illuminated readout having a glare and reflection control for ambient light as claimed in claim 1 wherein the casement is a watch casement.

10. A self-illuminated readout having a glare and reflection control for ambient light as claimed in claim 1 wherein the casement encloses a cathode ray tube.

11. A self-illuminated readout having a glare and reflection control for ambient light as claimed in claim 1 wherein the casement is a console viewed by a seated person.

* * * * *